

In the Matter of

Inv. No. 337-TA-412

**CERTAIN VIDEO GRAPHICS DISPLAY CONTROLLERS AND PRODUCTS
CONTAINING SAME**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW THE BULK OF AN
INITIAL DETERMINATION FINDING NO VIOLATION OF SECTION 337 OF THE
TARIFF ACT OF 1930**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review, as explained below, the presiding administrative law judge's final initial determination (ID) and has thereby made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

The Commission ordered the institution of this investigation on July 27, 1998, based on a complaint filed on behalf of Cirrus Logic, Inc., Fremont, California ("Cirrus" or "complainant"). 63 *Fed. Reg.* 40932 (1998). The notice of investigation was published in the *Federal Register* on July 31, 1998. *Id.* The complaint alleged that ATI Technologies, Inc., Thornhill, Ontario, Canada ("ATI" or "respondent") violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by importing, selling for importation, and selling in the United States after importation certain video graphics display controllers that infringe claims 37 and 43 of Cirrus' U.S. Letters Patent 5,598,525 ("the '525 patent"). *Id.* On October 29, 1998, the presiding administrative law judge (ALJ) issued an ID (ALJ Order No. 14) granting Cirrus' motion to amend the complaint and notice of investigation to add allegations of infringement of claims 1-10, 12-21, and 23-24 of the '525 patent, and that ID was not reviewed by the Commission. 63 *Fed. Reg.* 66581 (1998).

The ALJ held a tutorial on the technology for displaying video and graphics data on personal computers on January 7, 1999. On January 20, 1999, Cirrus filed a notice of withdrawal of certain disputed claims, indicating that only claims 13, 15, 16, 17, 23, and 37 remained in dispute. An evidentiary hearing was held from January 21, 1999, to January 29, 1999.

The ALJ issued her final ID on April 30, 1999, concluding that there was no violation of section 337, based on the following findings: (a) complainant failed to establish the requisite domestic industry; (b) the asserted claims of the '525 patent, claims 13, 15, 16, 17, 23, and 37, are invalid; and (c) assuming, *arguendo*, the validity of the asserted claims, respondent's accused devices do not infringe the asserted claims. On May 11, 1999, the ALJ issued her recommended determination on remedy and bonding, in the event the Commission were to conclude there is a violation of section 337.

On May 13, 1999, complainant filed a petition for review of the ID, arguing that the ALJ erred in construing specific terms in claims 13, 15, 16, 17, and 23, erred in her invalidity and infringement analyses of those claims, and erred in concluding that complainant did not satisfy the domestic industry requirement. Complainant's petition included a request for contingent review of the ALJ's conclusions concerning certain prior art and her construction of additional terms in these claims, should the Commission adopt complainant's claim construction over the ALJ's. Complainant did not petition for review of the ALJ's conclusions as to claim 37. Respondent filed a contingent petition for review identifying as issues for consideration should the Commission decide to review the ID certain aspects of the ALJ's construction of claims 13, 15, 16, 17, 23, and 37, application of the doctrine of equivalents, and conclusions as to invalidity and inequitable conduct. The Commission investigative attorney (IA) petitioned for review of the ALJ's alternative basis for finding no domestic industry as erroneous as a matter of law. On May 20, 1999, respondent, complainant, and the IA filed responses to the petitions for review.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review the ID, except that the Commission determined to take no position as to the ALJ's findings as to the following issues: (1) the invention date of the '525 patent; (2) the prior art status of the Oak/Brooktree combination under 35 U.S.C. § 102(a); (3) the prior art status of the Bindlish '864 patent under 35 U.S.C. § 102(e); (4) the invalidity of claim 37 of the '525 patent as anticipated by the Bindlish '864 prior art patent under 35 U.S.C. § 102(e); and (5) the non-enablement of claims 13, 15, 16, 17, and 23. With respect to the ID's finding that complainant failed to satisfy the technical prong of the domestic industry requirement in part because claim 13 is invalid for indefiniteness, the Commission clarifies that it understands the ID to mean that complainant cannot meet the burden of demonstrating the practice of an indefinite claim. The Commission thereby adopted the ID, with the exceptions noted, as its final determination.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-210.43 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-.43).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business

hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000.

By order of the Commission.

Donna R. Koehnke
Secretary

Issued: July 19, 1999